IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.MC.No. 429 of 2007()

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CC.324/2006 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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PETITIONER:

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P.K. ABDUL RAHIMAN, AGED 62 YEARS,
S/O.SHAFI AHAMMED, MARINA HOUSE,
KAVIYOOR, CHOKLI, TALASSERY,
KANNUR DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. REJIMON, S/O.MICHAEL, KOTTIYUR,
AMBAYATHODU P.O., THALASSERY,
KANNUR DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**CRL.M.C.NO. 429 OF 2007**

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Dated this the 26th day of March, 2007

**ORDER**

The petitioner is the 2nd accused in a prosecution under Sec.420 read with Sec.34 of the IPC. The crux of the allegation against the three accused persons including the petitioner is that they, in collusion, cheated one Michael – the deceased, father of the 2nd respondent herein. The 1st accused, claiming to be the Power-of-Attorney holder of the 2nd accused, had allegedly induced the said Michael to part with money as a decree sale consideration for the property. He did so knowing fully well that he had no legal authority of the 2nd accused to do the same; but misrepresented that he had requisite authority. This allegedly was done by him in collusion with the petitioner/the 2nd accused and the 3rd accused – the wife of the 1st accused. Later the petitioner transferred a portion of the property to the 3rd accused. The de facto complainant had allegedly filed a private complaint which was referred to the police for investigation

under Sec.156(3) of the Cr.P.C. Accordingly, a crime has been registered and the investigation conducted. After completion of investigation, the final report was filed and cognizance has been taken against the accused persons including the petitioner. Process has been issued to the petitioner. The petitioner has rushed to this Court raising a plea that cognizance taken against him is unjustified and the proceedings deserve to be prematurely terminated invoking the extraordinary inherent powers under Sec.482 of the Cr.P.C.

2. I am certainly of opinion that it is for the petitioner to appear before the learned Magistrate and claim discharge. The contention that the allegations are false and that sufficient materials are not there to instil the threshold satisfaction in the mind of the court must certainly be raised by the petitioner before the learned Magistrate. The learned Magistrate must consider the same in the light of the materials on which reliance is placed by the prosecution.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Sec.482 of the Cr.P.C. It is certainly not to be invoked as a matter of course. Even the fact that the petitioner may be entitled for discharge or acquittal

cannot by itself persuade this Court to invoke the powers under Sec.482 of the Cr.P.C. Has justice failed? Is there miscarriage of justice? Is their abuse of process of the court? These are the questions which the court has to consider alertly when request is made to invoke the powers under Sec.482 of the Cr.P.C. I am satisfied, in the facts and circumstances of this case, that this is an eminently fit case where the petitioner must appear before the learned Magistrate and claim discharge at the stage of Sec.239/240 of the Cr.P.C. Needless to say that the learned Magistrate must consider such plea and take appropriate decision at that stage.

4. The learned counsel for the petitioner contends that the petitioner has nothing to do with the 2nd respondent and the mere fact that subsequently the petitioner had executed a sale deed and a portion of the property was assigned to the wife of the 1st accused (i.e., the 3rd accused) is no reason to jump to a conclusion that there was a collusion between accused 1 to 3. I do not want to express any opinion on that aspect. Even the fact that a suit filed by the de facto complainant was dismissed for non-payment of court fee by the civil court is also not sufficient to persuade me to invoke the powers under Sec.482 of the

Cr.P.C.

5. In the result, this Crl.M.C. is dismissed; but with the specific observation that the petitioner's claim for discharge must be carefully considered by the learned Magistrate at the stage of Sec.239/240 of the Cr.P.C.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge